



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 5, 1996

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR96-1392

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40679.

The Texas Department of Insurance (the "department") received a request for five categories of documents relating to Request for Proposal Reference Number TSNAII-ALS dated November 1, 1991, reports relating to the Texas Private Passenger Automobile Rate Data Audit, a copy of any Texas Private Passenger Automobile Rate Data Audit final report, and all documents provided by Ernst & Young related to Allstate Insurance Company, Allstate Indemnity Company, or any related or affiliated company, which documents relate to Request for Proposal Number TXNAII-SFC. You state that some of the requested information will be provided to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. You have submitted samples of the requested information. We have considered the exceptions you claimed and have reviewed the sample documents.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section

552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

Section 552.111 also excepts from required public disclosure a preliminary draft of a letter or document related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990). We have reviewed the draft documents at issue and conclude that they relate to the policymaking processes of the governmental body. Therefore, the drafts themselves may be withheld from disclosure. We note that other transmittal letters and memoranda are included in the documents labeled "drafts." We have reviewed them and marked the information that we conclude may be withheld under section 552.111 of the Government Code.

The department has claimed that the other submitted documents are excepted from disclosure under both sections 552.107 and 552.111. We have reviewed the documents and conclude that some information may be withheld under these sections. We have marked the documents to indicate the information that may be withheld. The remaining information may not be withheld under either exception.

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 40679

Enclosures: Marked documents

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(w/o enclosures)